

App. No. 10/707,473
Amendment dated September 5, 2005
Reply to Office action of May 3, 2005

REMARKS

Summary of Amendments

Independent claims 1-3 have been amended to more clearly recite the novel structure of a shoe according to the present invention. The rest of the originally pending claims, dependent claims 4-12, remain in their original form.

In addition, new claim 13 has been added. New claim 13 uses somewhat different language from claims 1-3, and among the limitations it recites are that "the heel side portion along the outside part of the foot" splits away to divide the "outer side of the upper," and that the third hook-and-pile fastener "is provided on obverse/reverse sides of the split-away part of the upper." This latter limitation is supported by the drawings—in particular by Figs. 1, 2B, 3, 4A and 4B.

Claim Rejections - 35 U.S.C. § 103

Claims 1-3; Epstein '640 in view of McBarron '622 and Delecolle '379

Claims 1-3 were rejected as being unpatentable over U.S. Pat. No. 2,444,640 to Epstein in view of U.S. Pat. No. 4,628,622 to McBarron and French Pat. No. 2,617,379 to Delecolle.

In making the rejection under this section, the Office action states that Epstein discloses the shoe "upper being permanently attached along the heel area and one of the lateral sides of the sole," and "the upper being unilaterally split between the quarter and vamp, from the collar to the other lateral side of the sole."

It would seem that the upper of the Epstein shoe is permanently attached not only along "one of the lateral sides of the sole," but also along both lateral sides thereof. Further, to assert that Applicant's claim recitation of "the upper being unilaterally split between the quarter and vamp, from the collar to the other lateral side of the sole" reads on the shoe disclosed in Epstein, seems to require reading the side flaps/bluchers 33/14 in Epstein each as lying along a unilateral split between the quarter and vamp that runs "from the collar to the other lateral side of the sole." Nevertheless, the base of each flap/blucher 33/14 is sewn to the vamp, permanently closing the split onto the vamp, as is the case with many a shoe.

The Office action in rejecting claims 1-3 also alleges that Epstein discloses a zipper "provided in the area of the ball of the big toe, along the toe cap and reaching to the split between the quarter and the vamp." Nevertheless, the zipper disclosed in Epstein neither starts nor ends in the area of the ball of the big toe, but instead runs

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from blucher to blucher, whereby the zippered plug 36/17, which is independent from the rest of the shoe, is completely detachable.

The remoteness of the Epstein shoe structure—configured for replacing the plug—from the structure of a shoe according to the present invention—configured for ease of putting on—suggests that language in Applicant's claims as originally filed lacked clarity.

Key distinguishing features of a therapeutically directed shoe according to the present invention are that: (1) the upper is structured so that the major portion—essentially the vamp—can be completely opened out sideways to enable the wearer simply to step into the shoe—that is, step directly onto the sole—without the wearer having to use his or her hands to get the shoe on the foot; and (2) the fastening system, in which the horizontal zipper is combined with the Velcro™ on the zipper pull-tab and on the quarter alongside where the vamp splits from it to allow the vamp to open off the sole, enables the shoe to be secured firmly about the wearer's foot simply by drawing the zipper closed and securing the pull-tab Velcro™ to the corresponding Velcro™ on the quarter.

Accordingly, by the present amendment to claims 1-3, some limitations have been deleted as unnecessary and merely distracting from clearly setting forth the subject matter that the Applicant regards as her invention, and other limitations have been added, to clarify the distinguishing features noted above.

In particular, claim 1 now recites

A shoe comprising:

a sole;

an upper defining a quarter, a collar, and a vamp having a toe cap, said quarter being permanently attached to said sole *and only unilaterally continuous with said vamp*, said vamp being split *from said quarter down one side of said upper*, from the collar to the sole, and said upper being horizontally split along said sole *starting in a position on the vamp in the area for the ball of the big toe, running along the toe cap, and reaching to where the vamp is split from the quarter*, *said upper therein structured so that when said vamp is open off said sole, said shoe may be stepped into without obstructing the wearer's foot*,

a zipper provided along said horizontal split, and having a pull-tab;

a first hook-and-pile fastener provided on said pull-tab; and

a second hook-and-pile fastener complementary to said first hook-and-pile fastener, provided on said quarter alongside where said vamp splits from said quarter.

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Claims 2 and 3 likewise contain the recitations emphasized in italics in claim 1 as presented above.

Neither the Epstein reference, nor any other prior art of record, discloses a shoe structured with a quarter *only unilaterally continuous with the vamp*—that is, continuous with the vamp on one side of the shoe, and discontinuous with the vamp on the other—in particular, none of the prior art of record teaches the vamp being split *from the quarter down one side of the upper*.

The Office action acknowledges that Epstein does not teach details of the shoe fastening system of the present invention. But the action then asserts that the combination of the snap arrangement disclosed in published French patent application (no. 2 617 379) by Delecolle (cited in the IDS filed May 10, 2004 and discussed in a supplemental IDS filed March 14, 2005 in the instant case)—in which a snap half provided on the zipper pull fastens to a snap half provided in the middle of the outside of the quarter—with the hook-and-pile fasteners “placed on the flaps flanking the zipper to hide the zipper and protect it from the elements,” as disclosed in the McBarron reference, renders the shoe fastening system of the present invention obvious.

The snap half that mates with the half on the zipper pull in Delecolle is disposed at a considerable remove from the flap 1 when zipped onto the upper 7, so as to draw the flap 1 taught across the portion 10E of the quarter, which is continuous with the portion of the upper 7 on which the zipper half 6 complementing the half 4 on the flap 1 is attached. Furthermore, as noted above, the Delecolle shoe does not feature a quarter *only unilaterally continuous with the vamp*, not that the vamp is split *from the quarter down one side of the upper*. Applicant notes that the vamp in the Delecolle continues as an underlay beyond the zip half 6, as a consequence of which the shoe cannot be stepped into as can a shoe of the present invention.

Neither does the McBarron shoe feature a quarter *only unilaterally continuous with the vamp*, not that the vamp is split *from the quarter down one side of the upper*. Moreover, the zipper system disclosed in McBarron does not split the upper along sole, as to the contrary is the case in the present invention. Thus, a Velcro™ fastening system structured according to McBarron cannot achieve the distinguishing shoe-fastening characteristics of the present invention, even in combination with the zipper pull fastening arrangement of Delecolle.

Consequently, the combination of the disclosures by Epstein, Delecolle, and McBarron does not even reach a shoe structure according to the present invention, and thus featuring, as now clearly set forth in the independent claims:

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- (1) an upper structured so that the major portion—essentially the vamp—can be completely opened out sideways to enable the wearer simply to step into the shoe—that is, step directly onto the sole—without the wearer having to use his or her hands to get the shoe on the foot; and
- (2) a fastening system, in which the horizontal zipper is combined with a hook-and-pile fastener on the zipper pull-tab and on the quarter alongside where the vamp splits from it to allow the vamp to open off the sole, that enables the shoe to be secured firmly about the wearer's foot simply by drawing the zipper closed and securing the pull-tab hook-and-pile fastener to the corresponding hook-and-pile fastener on the quarter.

Claims 4-6; Epstein '640 in view of McBarron '622 and Delecolle '379, further in view of Rys-Sikora et al. '124

Claims 4-6 were rejected as being unpatentable over the Epstein, McBarron, and Delecolle references, in further view of U.S. Pat. No. 4,067,124 to Rys-Sikora et al.

It is respectfully submitted that for the foregoing reasons the patentability of the present application rests in claims 1-3 to begin with, and thus also in the remaining claims rejected under this section of the Office action—claims 4-6, which depend respectively from claims 1, 2 and 3.

Claims 7-9; Epstein '640 in view of McBarron '622 and Delecolle '379, further in view of Polifroni '273, Official Notice

Claims 7-9 were rejected as being unpatentable over the Epstein, McBarron, and Delecolle references, in further view of U.S. Pat. No. 6,557,273 to Polifroni, and in view of Official Notice.

It is respectfully submitted that for the foregoing reasons the patentability of the present application rests in claims 1-3 to begin with, and thus also in the remaining claims rejected under this section of the Office action—claims 7-9, which depend respectively from claims 1, 2 and 3.

Claims 10-12; references applied in rejecting claims 1-3

Claims 10-12 were rejected as being obvious over the same references cited in making the rejection of claims 1-3 addressed above.

It is respectfully submitted that for the foregoing reasons the patentability of the present application rests in claims 1-3 to begin with, and thus also in the

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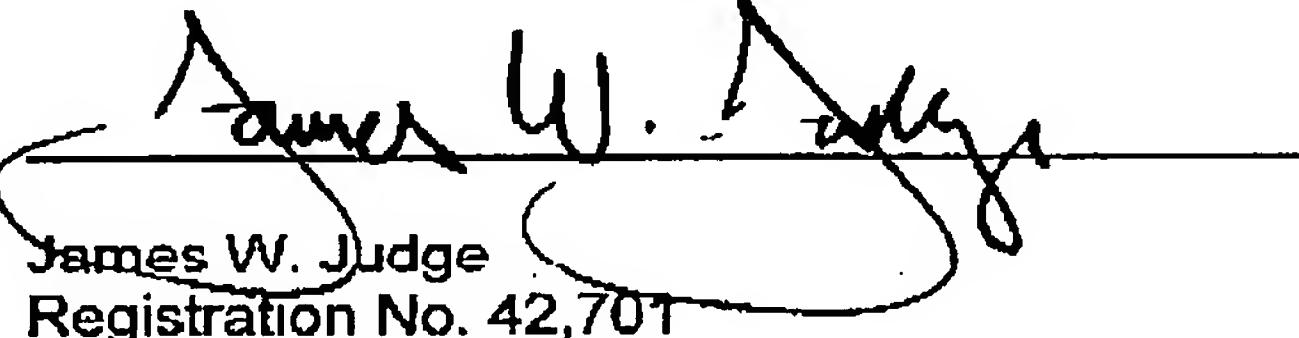
remaining claims rejected under this section of the Office action—claims 10-12, which depend respectively from claims 1, 2 and 3.

A response to this Office Action was due by August 3, 2005, and consequently the fee for a one-month extension of time is indicated on the accompany Fee Transmittal, as is the fee for extra independent claim 13. The fees are being paid through the credit-card payment authorization form that is attached hereto. Please consider this Amendment as timely filed.

Accordingly, Applicant courteously urges that this application is in condition for allowance. Reconsideration and withdrawal of the rejections is requested. Favorable action by the Examiner at an early date is solicited.

Respectfully submitted,

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